



MISSISSIPPI VALLEY TITLE  
INSURANCE COMPANY

Mississippi  
**Agents Manual**

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\* MISSISSIPPI VALLEY TITLE  
\* \* \* INSURANCE COMPANY  
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## THANK YOU

As an agent of Mississippi Valley Title/Old Republic National Title, you are one of the most valued members of our corporate "family." We thank you for everything you have done and do to make our relationship not only profitable but pleasant. We value your friendship very much.

This manual represents our latest and best effort to make life as an agent a little bit easier. In it are underwriting procedures and tips to cover practically every situation we can conceive (See NOTE below). We have tried to arrange it in a systematic manner, making it easier for you to cope with a particular problem. We hope the index is sufficiently comprehensive to make the manual easy to use. We hope that we have not gone into more detail than necessary. The title insurance process is not all that complicated. It is simply a matter of making sure that you set forth the proper requirements and exceptions in whatever you produce. Common sense can supply answers to most questions. We strive for uniformity, because this is what our customers want, and that is what the manual will provide. We do not concern ourselves so much with exact language as with intent and meaning in the commitment or policy. We would welcome suggestions.

NOTE: We know we haven't covered every problem you will run into; but, after you have exhausted the manual as a resource, please feel free to call or e-mail us.

Mississippi 1-800-647-2124  
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MISSISSIPPI

INTRODUCTION

TO: ALL AGENTS AND UNDERWRITING EMPLOYEES

This Manual is being published as a guide in the preparation of Mississippi commitments, policies, and endorsements of our Company. It is intended for the use of the Company's agents and employees and should be used extensively in order to standardize our product. The use of standard language appeals to our national customers and governmental institutions.

The principal underwriting objective of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company is to know that the title to the interest in the real estate being insured is good, so that its policyholders may enjoy peaceful, undisturbed possession thereof. To accomplish this, our first concern is the careful selection and appointment of well qualified, experienced agents and examining attorneys who are familiar with and knowledgeable in prudent title examining and underwriting procedures in their area.

Over the years, the Company has adopted certain underwriting principles which it feels should be generally acceptable to its entire area of operations. These principles are set out in this Manual. We fully realize the impossibility of anticipating and determining each and every problem that may arise. This is where we must, and do, rely upon you, your experience, your knowledge of local practices, and your integrity to achieve our objective of giving our insured the quiet, undisturbed possession which he is seeking and to which he is entitled.

We realize that certain of our offices have their own standard language for requirements and exceptions which have been used for many years. However, sincere efforts should be made to use the wording set forth in this Manual, since it has been carefully considered and reflects the underwriting policies of the Company.

In preparing the Manual, we attempted to group matters of major importance under subject headings. Subjects have been given Article numbers. An Index referring to Article numbers and the page on which they can be found has been included.

It is our intention to amend the Manual as the need arises, at which time replacement or supplemental sheets will be issued with instructions regarding their insertion.

We recommend that the person issuing commitments prepare a sheet instructing the typist concerning the preparation of the form. Reference to the Article numbers in this Manual should assist the typist.

It should be pointed out that the Company operates in several states and the language employed herein, or suggested for use, may vary from local custom or usage. Please use your best judgment if changes are necessary. The exact language isn't nearly so important as making clear our exact intent.

After you have had an opportunity to review this Manual, we welcome, indeed, we would be most grateful for, your suggestions leading to its improvement.

<b>ACCESS</b>	<b>INDEX</b>	<b>CONTRACTOR'S</b>
		<b>PAGE</b>
Access .....		13-7
Access and Entry Endorsement ALTA 17-06 .....		9-13, 9-49
Accounting, Reporting and Remitting Policies .....		90-1
Acknowledgments .....		21-1, 22-1
Acreage .....		4-5
Address Requirement for Deed .....		21-7
Adjustable Rate Mortgages .....		9-4
Adopted Children .....		21-5
Adverse Possession .....		21-1, 21-8
Affirmative Coverage .....		13-2, 21-1
Aggregation Endorsement ALTA 12-06 .....		9-9, 9-38
Agreements - License .....		21-11
Agreements and FDIC .....		21-11
Application and Attorney's Final Certificate .....		3-1, 3-2
Application and Attorney's First Certificate .....		2-1, 2-3
Approved Attorney .....		1-3
Assessments, Special .....		13-7
Assignment Endorsement ALTA 10-06 .....		9-8, 9-35
Assignment and Date Down Endorsement ALTA 10.1-06 .....		9-8, 9-36
Assignments - Failure to Record .....		21-5
Assumption and Modification Procedure .....		14-8, 95-8
Attorney Agent .....		1-4
Attorney's Certificate, Limitation of Action .....		21-8
Automatic Subordination .....		14-11
Bank Agreements and the FDIC .....		21-11
Bankruptcy .....		13-9, 21-1
Binders (See Commitments)		
Bona Fide Purchaser .....		14-2
Building Restrictions .....		13-8
Cancellation of Revolving Credit Loan .....		14-9
Cemeteries .....		13-10
Certification of Title by Agents and Approved Attorneys .....		1-4, 2-1, 3-1
Checks .....		14-2
Closing Instructions .....		1-5
Commitments		
Preparation of Schedules A & B .....		6-1
Forms .....		6-4 thru 6-8
Lender's .....		6-4 thru 6-6
Jacket .....		6-7
U. S. Policies .....		12-2
Comprehensive Endorsement .....		9-16, 9-60
Condominium Endorsement ALTA 4.1-06 .....		9-3, 9-23
Contractor's/Sellers Indemnity Agreement .....		16-9

CONSTRUCTION	INDEX	ENDORSEMENTS
		PAGE
<b>Construction Loans</b>		
Generally .....		10-1
Commitments .....		10-2
Mortgagee Policy Provisions .....		10-3
Owner's Policy Provisions .....		10-4
Up-Date Endorsement .....		10-4, 10-9
Mechanics' and Materialmen's Lien .....		5-1, 10-1, 13-9, 21-3
<b>Contiguity - Multiple Parcels Endorsement ALTA 19-06</b> .....		9-14, 9-53
<b>Contiguity - Single Parcel Endorsement ALTA 19-1-06</b> .....		9-14, 9-54
<b>Continuation of Title from Prior Policy</b> .....		14-7
<b>Corporation Acknowledgment</b> .....		21-6
<b>Co-tenants - Ouster</b> .....		21-8
<b>Covenants</b>		
Generally .....		21-1
Liens Created Therein .....		13-11, 21-6
Mortgagee Policies and Commitments		
Affirmative Coverage Over Violations .....		13-2
Not Violated - No Reversionary Clause .....		13-1
Reversionary Clause .....		13-2
Violated - No Reversionary Clause .....		13-2
Owners' Policies and Commitments .....		13-3
Standing to Enforce Against Adjacent Landowner .....		21-10
<b>Coverage over \$1,000,000</b> .....		14-1
<b>Creditors' Notice - Affidavit</b> .....		21-12
<b>Creditors Rights Endorsement ALTA 21-06</b> .....		9-14, 9-56
<b>Decree for Separate Maintenance</b> .....		21-9
<b>Deed of Trust, Purchase Money</b> .....		21-5
<b>Deed of Trust, Void as to Mechanics' Lien</b> .....		21-6
<b>Deeds in Lieu of Foreclosure</b> .....		21-2
(See Also Foreclosures)		
<b>Defects in Title</b> .....		1-1
<b>Definition for Title Insurance</b> .....		1-1
<b>Descent Among Illegitimates</b> .....		21-8
<b>Due on Sale Clause</b> .....		21-6, 21-8
<b>Easements, Highway Right-of-Way</b> .....		21-9
<b>Encroachments Shown by Survey</b> .....		21-2
<b>Endorsement of Checks</b> .....		14-2
<b>Endorsements</b>		
Blank .....		9-1, 9-18
ALTA 1-06 - Street Assessments .....		9-1, 9-19
ALTA 2-06 - Truth In Lending .....		9-2, 9-20
ALTA 3-06 - Zoning .....		9-2, 9-21
ALTA 3.1-06 - Zoning Completed Structure .....		9-2, 9-22
ALTA 4.1-06 - Condominium .....		9-3, 9-23

ENDORSEMENTS	INDEX	ESCROW PAGE
<b>ENDORSEMENTS (Continued)</b>		
ALTA 5.1-06 - Planned Unit Development	.....	9-3, 9-24
ALTA 6-06 - Variable Rate Mortgage	.....	9-4, 9-25
ALTA 6.2-06 - Variable Rate Mortgage - Negative Amortization	.....	9-4, 9-26
ALTA 7-06 - Manufactured Housing Unit	.....	9-5, 9-27
ALTA 8.1-06 - Environmental Protection Lien	.....	9-6, 9-28
ALTA 9-06 - Restrictions, Encroachments, Minerals	.....	9-6, 9-29
ALTA 9.1-06 - Restrictions, Encroachments, Minerals (Unimproved)	....	9-7, 9-30
ALTA 9.2-06 - Restrictions, Encroachments, Minerals (Improved)	....	9-7, 9-31
ALTA 9.3-06 - Restrictions, Encroachments, Minerals	.....	9-7, 9-32
ALTA 9.4-06 - Restrictions, Encroachments, Minerals (Unimproved)	....	9-7, 9-33
ALTA 9.5-06 - Restrictions, Encroachments, Minerals (Improved)	....	9-7, 9-34
ALTA 10-06 - Assignment	.....	9-8, 9-35
ALTA 10.1-06 - Assignment and Date Down	.....	9-8, 9-36
ALTA 11-06 - Mortgage Modification	.....	9-8, 9-37
ALTA 12-06 - Aggregation	.....	9-9, 9-38
ALTA 13-06 - Leasehold - Owner's	.....	9-9, 9-39
ALTA 13.1-06 - Leasehold - Loan	.....	9-9, 9-40
ALTA 14-06 - Future Advance - Priority	.....	9-10, 9-41
ALTA 14.1-06 - Future Advance - Knowledge	.....	9-10, 9-42
ALTA 14.2-06 - Future Advance - Letter of Credit	.....	9-10, 9-43
ALTA 14.3-06 - Future Advance - Reverse Mortgage	.....	9-11, 9-44
ALTA 15-06 - Nonimputation - Full Equity Transfer	.....	9-11, 9-45
ALTA 15.1-06 - Nonimputation - Additional Insured	.....	9-11, 9-46
ALTA 15.2-06 - Nonimputation - Partial Equity Transfer	.....	9-11, 9-47
ALTA 16-06 - Mezzanine Financing	.....	9-12, 9-48
ALTA 17-06 - Access and Entry	.....	9-13, 9-49
ALTA 17.1-06 - Indirect Access and Entry Proposed	.....	9-13, 9-50
ALTA 18-06 - Single Tax Parcel	.....	9-13, 9-51
ALTA 18.1-06 - Multiple Tax Parcel	.....	9-13, 9-52
ALTA 19-06 - Contiguity - Multiple Parcels	.....	9-14, 9-53
ALTA 19.1-06 - Contiguity - Single Parcel	.....	9-14, 9-54
ALTA 20-06 - First Loss - Multiple Parcel Transactions	.....	9-14, 9-55
ALTA 21-06 - Creditors Rights	.....	9-14, 9-56
ALTA 22-06 - Location	.....	9-15, 9-57
ALTA 22.1-06 - Location and Map	.....	9-15, 9-58
Comprehensive - 100 XC	.....	9-16, 9-60
Construction Advance	.....	10-9
FNMA Balloon Mortgage	.....	9-16, 9-61
Home Owners Inflation Shield	.....	9-17, 9-62
Rates	.....	95-9
Revolving Credit Loan (RCL)	.....	9-15, 9-59
<b>Environmental Protection Lien Endorsement ALTA 8.1-06</b>	.....	9-6, 9-28
<b>Escrow Agreement</b>	.....	14-18
<b>Escrow Generally</b>	.....	14-2

ESTATES	INDEX	FIRST PAGE
Estates - Notice to Creditors		21-12
Exceptions		
Access	.....	13-7
Bankruptcy	.....	13-9
Building Restrictions	.....	13-8
Cemeteries	.....	13-10
Covenants	.....	
Liens Created Therein	.....	13-11, 21-6
Mortgagee Policies and Commitments		
Affirmative Coverage Over Violations	.....	13-2
Not Violated - No Reversionary Clause	.....	13-1
Reversionary Clause	.....	13-2
Violated - No Reversionary Clause	.....	13-2
Owners' Policies and Commitments	.....	13-3
Encroachment	.....	13-5, 21-2
Grave Sites	.....	13-10
Leases	.....	13-5, 13-10
Leveraged Buyouts	.....	14-10
Mechanics' and Materialmen's Liens	.....	5-1, 13-9
Mineral Reservation	.....	13-3
Minerals Not Checked	.....	13-11
Oil and Gas Lease	.....	13-4
Party Wall	.....	13-11
Personal Property in Deed of Trust	.....	13-11
Power Lines	.....	13-3
Riparian Rights	.....	13-6
Sixteenth Section Land	.....	13-10
Special Assessments	.....	13-7
Standard Mortgagee Policy Exceptions	.....	13-12
Standard Owners Policy Exceptions	.....	8-2
Survey		
Matters Shown by Survey	.....	4-4, 13-5
Short Survey Exception - Access Certified	.....	13-4
Standard Exception - No Survey	.....	13-4
Taxes	.....	13-1
Tidelands	.....	13-6
Water Rights	.....	13-6
Wetlands/Tidelands	.....	13-6
Zoning Ordinances	.....	13-3
Exempt Property	.....	21-7
Expanded Coverage Residential Loan Policy	.....	18-1 thru 18-19
Extra-Hazardous Risks	.....	14-3
Federal Tax Liens	.....	14-3
Redemption Rights of U.S.	.....	14-5
First Loss - Multiple Parcel Transactions Endorsement ALTA 20-06	.....	9-14, 9-55

FORECLOSURES	INDEX	GRAVE
		PAGE
<b>Foreclosures</b>		21-2
Bankruptcy		13-9, 21-1
By Federal Agency - Notice		21-6
Deficiency Judgment		21-6
Failure to Notify Internal Revenue		21-7
Federal Tax Liens		14-3
HUD		12-1
Liens of the United States		14-15
Publication of Trustee's Notice of Sale		21-9
Redemption Rights of the United States		14-5
Secretary of Housing		12-1
<b>Forms</b>		
Attorney's Final Certificate		3-2
Attorney's First Certificate		2-3
Commitment		6-4 thru 6-8
Contractor's/Sellers Indemnity Agreement		16-9
Expanded Coverage Policy Affidavit		18-9, 19-10
Homeowner's Policy Affidavit		15-6
Mobile Homes Certificate		17-15
Notice to Borrower and Waiver of Right to Purchase Title Insurance		8-5
Owners and Contract Affidavit - Final		5-2
Owners and Contract Affidavit - Interim		5-3
<b>Policies</b>		
Lender		
Construction Policy		10-5, 10-6, 10-9
Expanded Coverage Residential Loan Policy		18-12 thru 18-19
Loan Policy		7-6 thru 7-13
Short Form Residential Loan		16-6 thru 16-8
Short Form Expanded Coverage Residential Loan		19-11
Owner's		
Construction Owner's Policy		10-7, 10-8
Homeowner's Policy of Title Insurance		15-9 thru 15-14
Owner's Policy		8-6 thru 8-12
U.S.		12-3 thru 12-6
Surveyor's Inspection Report and Certification		4-6, 4-7
Waiver of Right to Purchase Title Insurance		8-5
<b>Fraud/Forgery</b>		21-3, 21-10
<b>Fraudulent Transfer</b>		13-9
<b>Future Advance Clause</b>		21-6
<b>Future Advance - Knowledge Endorsement ALTA 14.1-06</b>		9-10, 9-42
<b>Future Advance - Letter of Credit Endorsement ALTA 14.2-06</b>		9-10, 9-43
<b>Future Advance - Priority Endorsement ALTA 14-06</b>		9-10, 9-41
<b>Grave Site on Property</b>		13-10

HEIRSHIP	INDEX	MINERAL
		PAGE
Heirship Affidavit	11-3, 11-5, 11-6	
Highway Right-of-Way - Sale of	21-9	
Homeowner's Inflation Shield	9-17, 9-62	
Homeowner's Policy of Title Insurance	15-1 thru 15-14	
Homestead Exemption and Federal Tax Liens	21-7	
Homestead Exemption Chargeback	21-10	
Homestead Property	21-3, 21-7	
Homestead Statutes	21-7	
HUD Foreclosures	12-3	
Identifying Parties	21-3	
Illegitimates - Descent	21-8	
Improvements Note	10-4	
Indemnity - Generally	14-6	
Indemnity Agreement		
Escrow & Indemnity Agreement	14-18 thru 14-22	
Insurance Company Indemnity Agreement	14-23, 14-24	
No Money Indemnity Agreement	14-25, 14-26	
Contractor's/Seller's Indemnity Agreement	16-9	
Indirect Access and Entry Proposed Endorsement ALTA 17.1-06	9-13, 9-50	
Insolvent Lenders	14-13	
Insurance Company Indemnity Agreement	14-23, 14-24	
Insured Closing Service Letter	1-6 thru 1-8	
Introduction	1	
Joint Tenancy	21-8	
Joint Ventures	21-3	
Leaseback	14-11	
Leasehold Loan Endorsement ALTA 13.1-06	9-9, 9-40	
Leasehold Owner's Endorsement ALTA 13-06	9-9, 9-39	
Leases		
Exception	13-5	
Insuring	9-9, 9-39, 9-40	
Leveraged Buyouts	14-10	
License Agreements	21-11	
Liens in Covenants	13-11, 21-6	
Liens of the United States-Foreclosure and Redemption	14-15	
Limitation of Action on Attorney's Certificate	21-8	
Loan Closing Instructions	1-5	
Manufactured Housing Unit Endorsement ALTA 7-06	9-5, 9-27	
Mechanics' and Materialmen's Liens	5-1, 10-1, 13-9, 21-3	
Mezzanine Financing Endorsement ALTA 16-06	9-12, 9-48	
Mineral Reservations	13-3	
Mineral Rights	21-3	

MINERALS	INDEX	OWNER'S
		PAGE
Minerals Not Checked . . . . .		13-11
Miscellaneous Underwriting Tips . . . . .		21-5
Mobile Homes . . . . .		17-1 thru 17-15
Mobile Homes Certificate . . . . .		17-15
Mobile Home Endorsement ALTA 7-06 . . . . .		9-5, 9-27
Modification of Loan . . . . .		14-8, 95-8
Mortgagee Policies		
Forms		
Construction Policy . . . . .		10-5, 10-6, 10-9
Expanded Coverage Residential Loan Policy . . . . .		18-12 thru 18-19
Loan Policy . . . . .		7-6 thru 7-13
Short Form Residential Loan . . . . .		16-6
Short Form Expanded Coverage Residential Loan . . . . .		19-11
Generally . . . . .		7-1
Over \$1,000,000 . . . . .		14-1
Preparation . . . . .		7-1 thru 7-5
Short Form . . . . .		16-1
Simultaneous Issue . . . . .		8-4
Time Sharing Ownership . . . . .		14-12
Mortgage Modification Endorsement ALTA 11-06 . . . . .		9-8, 9-37
Multiple Tax Parcel Endorsement ALTA 18.1-06 . . . . .		9-13, 9-52
No Money Indemnity Agreement . . . . .		14-25, 14-26
Nonimputation - Additional Insured Endorsement ALTA 15.1-06 . . . . .		9-11, 9-46
Nonimputation - Full Equity Transfer Endorsement ALTA 15-06 . . . . .		9-11, 9-45
Nonimputation - Partial Equity Transfer Endorsement ALTA 15.2-06 . . . . .		9-11, 9-47
Notice to Borrower and Waiver of Right to Purchase Title Insurance . . . . .		8-4, 8-5
Notice to Creditors - Estate . . . . .		21-11, 21-12
Ouster of Co-tenants . . . . .		21-8
Owner's and Contractor's Affidavit . . . . .		5-1 thru 5-3
Owner's Policy		
Forms		
Construction Owner's Policy . . . . .		10-7, 10-8
Homeowner's Policy of Title Insurance . . . . .		15-9 thru 15-14
Owner's Policy . . . . .		8-6 thru 8-12
Generally . . . . .		8-1
Homeowner's Policy Owner's Affidavit . . . . .		15-6
Over \$1,000,000 . . . . .		14-1
Preparation . . . . .		8-1, 8-2
Standard Owner's Exceptions . . . . .		8-2
Simultaneous Issue . . . . .		8-4
Time Sharing Ownership . . . . .		14-12
U. S. Policies . . . . .		12-2 thru 12-6

PARTY	INDEX	RESTRICTIONS
		PAGE
Party Wall		13-11
Patent		11-3
Pending Disbursement Note		10-3
Personal Property Included in Deed of Trust		13-11
Planned Unit Development Endorsement ALTA 5.1-06		9-3, 9-24
Policy Accounting, Reporting, Remitting		90-1
Power of Attorney		21-3
Pro Forma Policy(Sample Policy)		7-4
Protective Covenants (See Covenants)		
Public Lands		21-7
Publication of Trustee's Notice of Sale		21-9
Purchase Money Deed of Trust		21-5
Rates		
Construction Financing		95-9
Endorsement		95-9
Extra Hazardous Risks		95-9
Loan Assumption & Modification		95-8
Modification of Mortgage Loans		95-8
Mortgagee Insurance		
Expanded Coverage Residential Loan Policy		95-5
Original Issue		95-5
Refinance-Substitution		95-7
Reissue Lender's Policy		95-6
Simultaneous Issuance		95-7
Owner's Insurance		
Homeowner's Policy of Title Insurance		95-2
Original Issue		95-2
Reissue Owner's Policy		95-3, 95-4
Simultaneous Issuance		95-4, 95-7
Revolving Credit		95-7
Second Mortgage Policy		95-7
Real Estate Investment Trusts (REITs)		14-1
Recording		21-3
Redemption Right of the United States		14-5
Reporting, Remitting and Accounting - Policy		90-1
Requirement for		
Assignments		11-2
Cancellation of Deed of Trust		11-2
Deed by Corporation		11-1
Deed by Minor		11-2
Heirship Affidavit		11-3, 11-4
Patent		11-3
Restrictions (See Covenants)		
Restrictions, Encroachments, Minerals Endorsement ALTA 9-06		9-6, 9-29

RESTRICTIONS	INDEX	TRUTH
		PAGE
Restrictions, Encroachments, Minerals Endorsement ALTA 9.3-06	9-7, 9-32	
Restrictions, Encroachments, Minerals Endorsement (Improved) ALTA 9.2-06	9-7, 9-31	
Restrictions, Encroachments, Minerals Endorsement (Improved) ALTA 9.5-06	9-7, 9-34	
Restrictions, Encroachments, Minerals Endorsement (Unimproved) ALTA 9.1-06	9-7, 9-30	
Restrictions, Encroachments, Minerals Endorsement (Unimproved) ALTA 9.4-06	9-7, 9-33	
Revolving Credit Loan Endorsement	9-15, 9-59	
Revolving Credit Loan Satisfaction	14-9	
Right of First Refusal	13-11	
Right-of-Way, Sale of	21-9	
Riparian Rights	13-6, 21-4	
 Sale of Highway Right-of-Way	21-9	
Sale/Leaseback	14-11	
Secretary of Housing Foreclosures	12-1	
Selected Statutes of Limitation	22-1	
Federal	22-7, 22-8	
Mississippi	22-1 thru 22-6	
Separate Maintenance Decree	21-9	
Short Form Expanded Coverage Residential Loan Policy	19-1 thru 19-13	
Short Form Residential Loan Policy	16-1 thru 16-9	
Single Tax Parcel Endorsement ALTA 18-06	9-13, 9-51	
Sixteenth Section Land	13-10	
Special Assessments	13-7	
State Tax Liens	21-7	
Street Assessments Endorsement ALTA 1-06	9-1, 9-19	
Subordination	21-4	
Subordination, Automatic	14-11	
Substitution of Trustee	21-10	
Surveys	4-1	
Encroachments	21-2	
Exceptions	4-4, 13-4, 13-5	
Generally	4-3, 21-4	
Survey	4-8	
Surveyor's Certificate	4-2	
Surveyor's Inspection Report	4-1, 4-6, 4-7	
 Tax Liens	14-3, 21-4, 21-7	
Tax Titles	21-4	
Tidelands	13-6	
Timber Deeds	14-17	
Time Sharing Ownership	14-12	
Title Certificates	1-4, 2-1, 3-1, 21-4	
Title Defects	1-1	
Title Insurance - Definition	1-1	
Title Insurance Process	1-2	
Trusts	21-5	
Truth In Lending Endorsement ALTA 2-06	9-2, 9-20	

UNDISCLOSED	INDEX	ZONING
		PAGE
<b>Undisclosed Purchasers</b>		21-8
<b>Unusual Risks</b>		21-5
<b>Updating a Policy</b>		14-7
<b>Usury</b>		14-2
<b>Variable Rate Endorsements</b>	9-4, 9-25, 9-26	
<b>Violation of Regulatory Agreement</b>	21-5	
<b>Waiver of Right to Purchase Title Insurance</b>	8-4, 8-5	
<b>Water Rights</b>	13-6	
<b>Wetlands/Tidelands</b>	13-6	
<b>What is Title Insurance</b>	1-1	
<b>Will as a Muniment of Title</b>	21-6	
<b>Will as Notice</b>	21-8	
<b>Zoning Completed Structure Endorsement ALTA 3.1-06</b>	9-2, 9-22	
<b>Zoning Endorsement ALTA 3-06</b>	9-2, 9-21	
<b>Zoning Ordinances</b>	13-3	

## TABLE OF CONTENTS

	PAGE
<b>INTRODUCTION</b>	1
<b>ARTICLE 1 - DEFINITIONS AND GENERAL INFORMATION</b>	1-1
What is Title Insurance	1-1
Basic Title Insurance Process	1-2
Approved Attorney	1-3
Attorney Agent	1-4
Certifications of Titles by Agents or Approved Attorneys	1-4
Loan Closing Instructions	1-5
Closing Protection Letter	1-6
<b>ARTICLE 2 - APPLICATION AND ATTORNEY'S FIRST CERTIFICATE</b>	2-1
Use of Form	2-1
Preparation of Front Page of Form - Schedule A	2-1
Preparation of Back Page of Form - Schedule B	2-1
Form(s)	2-3
<b>ARTICLE 3 - APPLICATION AND ATTORNEY'S FINAL CERTIFICATE</b>	3-1
Use of Form	3-1
Preparation	3-1
Form(s)	3-2
<b>ARTICLE 4 - SURVEYS AND SURVEYORS INSPECTION REPORT</b>	4-1
Surveyor's Inspection Report	4-1
Surveys	4-3
Form(s)	4-6
<b>ARTICLE 5 - OWNER'S AND CONTRACT AFFIDAVIT AND AGREEMENT</b>	5-1
Use of Form	5-1
Preparation	5-1
Form(s)	5-2
<b>ARTICLE 6 - COMMITMENT TO INSURE</b>	6-1
Introduction	6-1
Preparation of the Commitment	6-1
Form(s)	6-4
<b>ARTICLE 7 - LOAN POLICY OF TITLE INSURANCE</b>	7-1
Introduction	7-1
Availability	7-1
Preparation of the Lender's Policy	7-1

**ARTICLE 7 - CONTINUED**

Standard Exceptions .....	7-3
Pro Forma Policy .....	7-4
Form(s) .....	7-6

**ARTICLE 8 - OWNER'S POLICY OF TITLE INSURANCE .....** 8-1

Introduction .....	8-1
Availability .....	8-1
Preparation of the Owner's Policy .....	8-1
Standard Exceptions .....	8-2
Construction - Ongoing or Anticipated Following Closing .....	8-4
Simultaneous Issuance of Owner's Policy and Loan Policy .....	8-4
Notice to Borrowers and Waiver of Right to Purchase Title Insurance .....	8-4
Form .....	8-5
Form(s) .....	8-6

**ARTICLE 9 - ENDORSEMENT FORM .....** 9-1

Blank Endorsement .....	9-1
ALTA 1-06 .....	9-1
ALTA 2-06 .....	9-2
ALTA 3-06, 3.1-06 .....	9-2
ALTA 4.1-06 .....	9-3
ALTA 5.1-06 .....	9-3
ALTA 6-06, 6.2-06 .....	9-4
ALTA 7-06 .....	9-5
ALTA 8.1-06 .....	9-6
ALTA 9-06, 9.1-06, 9.2-06, 9.3-06, 9.4-06, 9.5-06 .....	9-6, 9-7
ALTA 10-06, 10.1-06 .....	9-8
ALTA 11-06 .....	9-8
ALTA 12-06 .....	9-9
ALTA 13-06, 13.1-06 .....	9-9
ALTA 14-06, 14.1-06, 14.2-06, 14.3-06 .....	9-10, 9-11
ALTA 15-06, 15.1-06, 15.2-06 .....	9-11
ALTA 16-06 .....	9-12
ALTA 17-06, 17.1-06 .....	9-13
ALTA 18-06, 18.1-06 .....	9-13
ALTA 19-06, 19.1-06 .....	9-14
ALTA 20-06 .....	9-14
ALTA 21-06 .....	9-14
ALTA 22-06, 22.1-06 .....	9-15
RCL .....	9-15
Comprehensive .....	9-16
FNMA Balloon .....	9-16
FNMA Modification .....	9-17

**ARTICLE 9 - CONTINUED**

Homeowner's Inflation .....	9-17
Form(s) .....	9-18 thru 9-62

**ARTICLE 10 - CONSTRUCTION LOANS .....** 10-1

Introduction .....	10-1
Preparation of Commitment (Binder) .....	10-2
Preparation of Mortgagee Policy .....	10-3
Endorsement for Advances .....	10-4
Preparation of Owner's Policy .....	10-4
Form(s) .....	10-5

**ARTICLE 11 - EXAMPLES OF SPECIFIC REQUIREMENTS**

**FOR COMMITMENT .....** 11-1

Three Most Common .....	11-1
Deed by Corporation .....	11-1
Deed by Minor .....	11-2
Assignment .....	11-2
Cancellation of Deed of Trusts .....	11-2
Recordation of Patents .....	11-3
Heirship Affidavits .....	11-3
Form(s) .....	11-5

**ARTICLE 12 - HUD FORECLOSURES, GOVERNMENT BIDS, U.S.POLICIES .....** 12-1

Special Procedure for FHA - 245 Loans .....	12-1
Government Bids .....	12-1
HUD Foreclosures .....	12-1
U. S. Policies .....	12-2
Form(s) .....	12-3

**ARTICLE 13 - EXAMPLES OF SPECIFIC EXCEPTIONS AND NOTES .....** 13-1

Taxes .....	13-1
Restrictive Covenants - Mortgagee Policy .....	13-1
Not Violated - No Reversionary Clause .....	13-1
Violated - No Reversionary Clause .....	13-2
Affirmative Coverage .....	13-2
Reversionary Clause .....	13-2
Restrictive Covenants - Owner's Policy .....	13-3
Zoning Ordinances .....	13-3
Power Lines .....	13-3
Mineral Reservations .....	13-3
Oil and Gas Lease .....	13-4
Survey Exception - No Survey Furnished .....	13-4
Short Survey Exception .....	13-4
Minor Survey Exception .....	13-5

**ARTICLE 13 - CONTINUED**

Encroachment .....	13-5
Leases .....	13-5
Riparian Rights .....	13-6
Water Rights .....	13-6
Wetlands/Tidelands .....	13-6
Commitment to Increase Coverage .....	13-7
Access .....	13-7
Special Assessments .....	13-7
Building Restriction Lines .....	13-8
Mechanics'/ Materialmen's Liens .....	13-9
Bankruptcy .....	13-9
Cemeteries .....	13-10
Grave Site on Property .....	13-10
Sixteenth Section Land .....	13-10
Party Wall .....	13-11
Deed of Trust Covering Real and Personal Property .....	13-11
Minerals Not Checked .....	13-11
Liens Created in Covenants .....	13-11
Right of First Refusal .....	13-11
Standard Mortgagee Policy Exceptions .....	13-12

**ARTICLE 14 - MISCELLANEOUS MATTERS .....** 14-1

Coverage in Excess of \$1,000,000 .....	14-1
REITs .....	14-1
Usury .....	14-2
Bona Fide Purchaser .....	14-2
Bonds of Surety Companies .....	14-2
Checks .....	14-2
Escrow .....	14-2
Extra-Hazardous Risks .....	14-3
Federal Tax Liens .....	14-3
Indemnity .....	14-6
Continuations of Title .....	14-7
Assumption and Loan Modification .....	14-8
Mortgage Extension/Modification .....	14-8
Revolving Credit Loan Satisfaction .....	14-9
Leveraged Buyouts .....	14-10
Sale/Leaseback .....	14-11
Automatic Subordination Clauses .....	14-11
Time Sharing Ownership .....	14-12
Insolvent Lenders .....	14-13
Liens of the U. S .....	14-15
Timber Deeds .....	14-17
Form(s) .....	14-18

<b>ARTICLE 15 - HOMEOWNER'S POLICY OF TITLE INSURANCE .....</b>	15-1
Purpose .....	15-1
Premium .....	15-1
Underwriting Guidelines .....	15-1
Title Search .....	15-4
Preparing the Commitment .....	15-4
Issuing and Preparing the Policy .....	15-4
Schedule A .....	15-5
Schedule B .....	15-5
Survey Matters .....	15-5
Form(s) .....	15-6
<b>ARTICLE 16 - SHORT FORM RESIDENTIAL LOAN POLICY .....</b>	16-1
Introduction .....	16-1
Availability .....	16-2
Underwriting Guidelines .....	16-2
Preparation of the Short Form Lender's Policy .....	16-2
Standard Exceptions .....	16-4
Construction Loans and Permanent Loans for Newly Constructed Residences .....	16-5
Form(s) .....	16-6
<b>ARTICLE 17 - MOBILE HOMES AND MANUFACTURED HOUSING .....</b>	17-1
Introduction .....	17-1
Excluding a Mobile Home from Coverage .....	17-1
Insuring a Mobile Home - Pre - 1999 Rules .....	17-2
Insuring a Mobile Home - Certificate of Title Rules .....	17-3
Procedure for Insuring Mobile Homes .....	17-5
Miscellaneous Procedures .....	17-12
Form(s) .....	17-15
<b>ARTICLE 18 - ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY .....</b>	18-1
Purpose .....	18-1
Premium .....	18-1
Underwriting Guidelines .....	18-1
Title Search .....	18-5
Preparing the Commitment .....	18-5
Issuing and Preparing the Policy .....	18-5
Schedule A .....	18-5
Schedule B - Part I .....	18-6
Schedule B - Part II .....	18-8
Form(s) .....	18-9

**ARTICLE 19 - ALTA SHORT FORM EXPANDED COVERAGE RESIDENTIAL**

<b>LOAN POLICY</b> .....	19-1
Purpose .....	19-1
Premium .....	19-1
Underwriting Guidelines .....	19-2
Title Search .....	19-5
Preparing the Commitment .....	19-5
Issuing and Preparing the Policy .....	19-6
Schedule A .....	19-6
Schedule B & the Addendum .....	19-8
Benefits of the Policy .....	19-8
Form(s) .....	19-10

**ARTICLE 21 - TIPS ON GOOD UNDERWRITING** .....

Acknowledgments .....	21-1
Adverse Possession .....	21-1
Affirmative Coverage .....	21-1
Bankruptcy .....	21-1
Covenants and Restrictions .....	21-1
Encroachments .....	21-2
Foreclosures & Deed in Lieu .....	21-2
Fraud/Forgery .....	21-3
Homestead .....	21-3
Identifying Parties .....	21-3
Joint Ventures .....	21-3
Mineral Rights .....	21-3
Mechanics' Liens .....	21-3
Power of Attorney .....	21-3
Recording .....	21-3
Riparian Rights .....	21-4
Subordination .....	21-4
Surveys .....	21-4
Tax Liens .....	21-4
Tax Titles .....	21-4
Title Certificate .....	21-4
Trusts .....	21-5
Unusual Risks .....	21-5
Violation of Regulatory Agreement .....	21-5
Miscellaneous .....	21-5
Assignments of Deed of Trust .....	21-5
Adopted Children .....	21-5
Purchase Money Deed of Trust .....	21-5
Deed of Trust Void as to Mechanic's Lien .....	21-6
Corporate Acknowledgment .....	21-6
Due On Sale Clause .....	21-6

**ARTICLE 21 - CONTINUED**

Liens in Covenants .....	21-6
Notice by Federal Authorities .....	21-6
Deficiency Judgement After Foreclosure .....	21-6
Will as a Muniment of Title .....	21-6
Future Advance Clause .....	21-6
Public Lands .....	21-7
Deed Requirement .....	21-7
MS State Tax Liens .....	21-7
Homestead Abandonment .....	21-7
Homestead Exemption and Federal Tax Liens .....	21-7
Foreclosure Without Notice to Internal Revenue .....	21-7
Homestead - Conveyance Without Joinder or Spouse .....	21-7
Exempt Property .....	21-7
Ouster of Cotenants .....	21-8
Joint Tenancy .....	21-8
Due on Sale Clauses .....	21-8
Adverse Possession .....	21-8
Limitation on Attorney's Certificate of Title .....	21-8
Wills - Notice .....	21-8
Descent Among Illegitimates .....	21-8
Undisclosed Purchasers .....	21-8
Mobile Homes .....	21-9
Sale of Highway Right-of-Way Easement .....	21-9
Decree for Separate Maintenance .....	21-9
Publication of Trustee's Notice of Sale .....	21-9
Enforcement of Covenants .....	21-10
Priority of Homestead Exemption Chargeback .....	21-10
Substitution of Trustee .....	21-10
Fraud/Forgery .....	21-10
Notice to Creditors - Estate .....	21-11
Agreements and the FDIC .....	21-11
License Agreements .....	21-11
Notice to Creditors Affidavit .....	21-12

**ARTICLE 22 - SELECTED STATUTES OF LIMITATION .....** 22-1

Mississippi .....	22-1
Federal .....	22-7

**ARTICLE 90 - POLICY ACCOUNTING, REPORTING, REMITTING .....** 90-1

Policy Reporting Form .....	90-4
Form(s) .....	90-3

**ARTICLE 95 - RATES .....** 95-1

Table of Contents for this Section .....	95-1
--	------

MISSISSIPPI

- (6) False testimony or a false affidavit is given as to the heirship of an Intestate landowner, leaving outstanding the title of undisclosed heirs.
- (7) False affidavits are given as to payment of bills for labor and material, and as a result mechanics' liens are filed against the property.
- (8) An attorney construes a will according to an existing local court decision, but a later decision overrules the earlier case.
- (9) A will is probated, but, thereafter, a later will is found that supersedes the earlier will and devises the land to other persons.

## 1.2 BASIC TITLE INSURANCE PROCESS

The basic title insurance process was developed from the needs of persons dealing in real estate. The problem which arises in any real estate transaction is, first, the purchaser desires to know before he pays his money that the title he is to purchase is a valid one. When he receives his assurance, he is willing to pay his money; but upon receipt of his deed or mortgage, he then desires some security which will continue to protect him in the future.

Therefore, there is the necessity of providing the preliminary assurances and later the continuing protection. In the title insurance process, this is accomplished as follows:

- (1) The approved examining attorney makes a search of all the public records or a properly prepared abstract consistent with real estate practice in his locality and provides to the title insurance company or its agent an application for title insurance together with a preliminary opinion of title.
- (2) The title insurance company issues to the prospective purchaser or prospective mortgagee what is called a "commitment to insure". The Commitment to Insure is a preliminary contract between the insured and the insurer which simply gives assurance to the prospective insured that when the conditions of the commitment to insure have been met the insurer will issue to the insured a final title insurance policy.
- (3) If the terms under which the title insurance company will insure the title, which terms will be set out in detail in the commitment to insure, are satisfactory to the proposed insured, the proposed insured issues his check or does whatever else is necessary to complete the transaction.
- (4) Upon completion of the transaction, the matter is again referred to the approved examining attorney (in many instances the approved examining attorney is also the closing agent), who then submits to the title insurance company his final certificate showing compliance with all of the terms and requirements of the commitment to insure.
- (5) Upon receipt of the final certificate from the approved examining attorney, the title insurance company then issues its final title policy.

It will be noted from the above procedure that the proposed insured is protected every step of the way. The basic problems of committing to insure the title or committing to the validity of the title before the transaction takes place have been taken care of with the issuance of the commitment to insure. The continuing assurance of good title desired by purchasers

MISSISSIPPI

and mortgagees of the real estate is provided when the final title policy is issued.

The title company has been taken care of in its underwriting risk by, first, the preliminary examination by the approved attorney, and, second, by the continuing examination through the date of the closure of the transaction by the approved examining attorney. In some instances where attorneys are handling numerous real estate transactions, they become so familiar with the requirements of title of both the insurer and the insured that they will know whether or not the title company will issue a final title policy satisfactory to all of the parties. In some such instances, the title company will never formally issue the commitment, but the examining attorney after doing his preliminary work will simply proceed to close the transaction without securing the commitment to insure if he is sure that final title policy will be issued based on his final certificate. In such instances, an application and attorney's final certificate is delivered to the title company after the transaction has been closed rather than the application and attorney's first certificate.

The various forms referred to herein, as well as special situations, will be described more fully in another portion of this manual. Basically, however, the same problems are present in every real estate transaction as outlined above, and the procedure and forms referred to in this section constitute the title insurance method of meeting the basic needs of purchasers and mortgagees of real property.

### 1.3 APPROVED ATTORNEY

An Attorney is approved when the Company is assured that his professional competence, integrity, and diligence have met our requirements. As long as these requirements are maintained, the attorney may expect a lasting relationship with the Company.

It should be kept in mind that the Company is the insurer and the applicants will look to their policies and the Company for protection. Consequently, it is imperative that the Approved Attorney prepare an opinion of title for the Company which accurately reflects the title picture of the property covered. In general, the Approved Attorney will be concerned with the legal aspects of examining the title while the Company will weigh underwriting risks. If any are present.

While the Approved Attorney examines mainly from the record, if there is any knowledge of a fact not of record that renders the title defective (for example, that the marital status of a grantor in a deed in the chain of title has been misrepresented), this fact must be raised.

In all those cases where the Approved Attorney refers the matter to the Company for final disposition, it would be appreciated if a statement of judgment on the facts or an opinion as to the applicable law was prepared for the Company. There also needs to be a description of the type and amount of coverage desired as well as knowledge of the possibility that increased coverage will later be requested. For example, be aware that future improvements are contemplated.

#### 1.4 ATTORNEY AGENT

#### **MISSISSIPPI**

The Attorney Agent is one who has met our qualifications to represent the company in the issuance of title insurance. The Attorney Agent has been authorized by contract to issue the commitments and final title policies of the company. The Agency contract governs the responsibilities and authority of the Attorney Agents, as well as the obligations and responsibilities of the company to the agent. We urge that you become very familiar with the Agency contract and that you always strive to comply with its requirements.

The majority of our title premiums are generated through our Attorney Agents. The attorney agency system is the backbone of our company. We take pride in the fact that we have one of the best attorney agency networks in the nation in those states in which we operate. Even though we do have a large number of Attorney Agents, we have a close relationship with most of them. By telephone and personal visits we get to know them well. We take pride in providing our agents with solutions to their needs and daily problems in the title area. We strive to do this in a quick and efficient manner. This is accomplished with experienced personnel and staff attorneys that are familiar with your state laws pertaining to real estate and title insurance. We feel that our Attorney Agents are a part of our company, and we want you to feel that you are a part of our company, too.

Please be assured that we welcome your inquiries relating to any problem in handling the title insurance process and the underwriting thereof.

#### 1.5 CERTIFICATION OF TITLES BY AGENTS OR APPROVED ATTORNEYS

The Company furnishes forms for certification of titles to the Company. However, opinions in another form are acceptable as long as they cover all the items set forth in the Company forms.

An attorney's certificate should certify that based on a personal examination of all applicable public records, that title is out of the sovereign (a patent has been recorded), that it begins with a good warranty deed not less than 32 years ago, and, that subject to the exceptions as contained therein, the marketable fee simple title, or leasehold title as the case may be, is vested in the owner.

Certificates of title **SHOULD NOT** be relied upon if they contain items which make exception for such things as:

- (1) Limiting liability to the addressee unless our Company is the named addressee
- (2) Limiting liability to a sum certain such as the price paid for the certificate or an amount such as \$10,000
- (3) Limiting certification to the sectional index or the accuracy of the sectional index
- (4) Marital rights of past or present owners
- (5) Lack of corporate capacity
- (6) And others

In cases such as these, the agent reviewing the certificate must require the certifying attorney to delete items such as these from the certificate of title prior to issuing any commitment or policy based thereon.

**DO NOT ACCEPT A CERTIFICATE OF TITLE FROM AN ATTORNEY  
THAT HAS ANY FINANCIAL INTEREST IN THE PROPERTY BEING CERTIFIED**

ARTICLE 21

MISSISSIPPI

TIPS ON GOOD UNDERWRITING

**CAUTION:** This is not intended to be a complete listing of all the circumstances which might result in the necessity of proper exceptions being made in the policy. Should you need underwriting assistance, please contact the home office or your State Agency Representative.

In an effort to improve our claims performance, we direct your attention to the following matters which should be considered each time a title insurance policy is issued:

**21.1 ACKNOWLEDGMENTS**

You should satisfy yourself that the acknowledgment is legal and proper under state law. Some things you should consider would be:

- (1) An acknowledgment dated prior to the date on the instrument is invalid.
- (2) An acknowledgment in Mississippi by a Notary without a seal is invalid.
- (3) An acknowledgment in Mississippi must state that the instrument was executed or signed and delivered.
- (4) An acknowledgment by the trustee in a deed of trust is invalid.
- (5) For proper corporate acknowledgment in Mississippi see White v. Delta Foundation, Inc. 481 So.2d. 329.

**21.2 ADVERSE POSSESSION**

A title which is dependent upon adverse possession is not insurable unless there is a decree of a court of competent jurisdiction.

**21.3 AFFIRMATIVE COVERAGE**

When affirmative coverage or special language is requested, you should secure permission from the home office or your State Agency Representative.

**21.4 BANKRUPTCY**

- (1) When the petition is filed, the "automatic stay" is in effect.
- (2) A Discharge does not affect the lien of a judgment or tax lien.
- (3) An Abandonment does not affect any liens against the property.
- (4) If a junior lienholder files bankruptcy, the automatic stay is in effect and a senior lienholder cannot foreclose.

**21.5 COVENANTS AND RESTRICTIONS**

- (1) Make an exception in the commitment and the policy.
- (2) Check the restrictions against the survey to determine that the setback, sidelines, and other restrictions have not been violated.
- (3) Watch out for reverter clause.
- (4) Watch for liens created in covenants for such things as street maintenance that are not subordinated to first mortgages.

## **21.6 ENCROACHMENTS SHOWN ON SURVEY**

### **MISSISSIPPI**

- (1) Standard exception for matters of survey on owner's policy
- (2) Generally, exception should be made as to encroachments across and into easements on a mortgagee policy. However, most major lenders will not take an exception without affirmative coverage, which is not always available.
- (3) A few guidelines include:
  - (a) Violation of building setback and sidelines on existing structures. We may give affirmative coverage against the forced removal of the improvement, but we do not ever insure against damages as a result of the violation.
  - (b) Minor violation of restrictive covenants and setback lines are considered as porches, steps, patio, and overhangs (we will affirmatively insure).
  - (c) Do not make exception for driveway onto a utility easement, hedges on property line, and fences that are no more than six inches off property line. If the fence varies more than six inches and surveyor says that it is an encroachment, make exception.
  - (d) Do not make exception to water meters, fireplugs, power boxes, power lines, power poles, and telephone boxes serving subject property.
  - (e) Structures encroaching onto easement; secure release of that portion of easement, make exception and obtain statement from the holder of the easement that it is OK to encroach onto easement and add statement to policy exception that holder of the easement has consented on encroachment onto easement.
  - (f) Structures encroaching across property line onto our property, make exception.
  - (g) Structures encroaching across property line onto neighbor, make exception or obtain easement for encroachment.

## **21.7 FORECLOSURES & DEEDS IN LIEU**

- (1) In a nonjudicial foreclosure, the law should be strictly construed. Even a minor error can be FATAL.
- (2) Anytime we are asked to insure the grantee of a deed in lieu of foreclosure or the purchaser at a judicial or nonjudicial foreclosure sale, the following exception should be included in the title commitment and/or policy:

Item \_\_\_\_\_. Consequences of any allegation or determination that the transfer to the insured was for less than fair equivalent value or that such sale constituted a preference or fraudulent transfer or is otherwise avoidable under bankruptcy or insolvency laws.

If the mortgagor who lost the property does not file for bankruptcy within 12 months from the date the transfer is recorded, the exception may then be removed by endorsement to the policy. Also, if that mortgagor has not filed for bankruptcy at the time the grantee or purchaser reconveys the property, the policy issued to any bona fide purchaser does not have to have the above exception.

- (3) Most states have a "right of redemption" after foreclosure that cannot be insured over. Mississippi does not have this right of redemption.
- (4) In Mississippi, the substitution of trustee must appear of record prior to the trustee's notice of sale being posted or published, the filing for record or lodging with the clerk not being sufficient; otherwise, your foreclosure would be void. Sec. 89-5-45 Miss. Code 1972.

**21.8 FRAUD/FORGERY**

**MISSISSIPPI**

Authorities to Cancel, Quitclaim Deeds, and other instruments which have been secured and brought to you by a party interested in the transaction should not be relied upon without verification of their execution by the party that executed same.

**21.9 HOMESTEAD**

In our opinion, homestead property cannot be conveyed in Mississippi by Power of Attorney. It is our opinion that you cannot waive a statutory right. Check your state law.

**21.10 IDENTIFYING PARTIES**

Unless you personally know the parties involved, proper identification (Driver's License, credit cards, etc) should be required.

**21.11 JOINT VENTURES**

A true Joint Venture is not a legal entity in Mississippi and can neither hold nor convey good title to real property. Check your state law.

**21.12 MINERAL RIGHTS**

- (1) Exception must be made unless the mineral estate has been certified back to the patent.
- (2) We will not insure mineral rights per se.

**21.13 MECHANICS' LIENS**

In addition to checking title for mechanics' liens...

- (1) In Mississippi, an owner's and contractor's affidavit should be obtained at each closing which states that all bills have been paid.
- (2) In Tennessee, mechanics' lien coverage should not be given unless the instrument being insured was recorded prior to the commencement of construction or the improvements have been completed and 10 days have lapsed since the filing of a notice of completion.
- (3) All owners' policies should normally contain an exception for mechanics' liens.

**21.14 POWER OF ATTORNEY**

Powers of Attorney should not be relied upon without a statement from the principal or your own personal knowledge that the Power of Attorney was in full force and had not been revoked at the time the instrument was executed. We prefer not to insure instruments executed by Power of Attorney. In our opinion, a Power of Attorney by a Fiduciary is not valid. Homestead property cannot be conveyed by power of attorney.

**21.15 RECORDING**

- (1) All documents should be recorded as soon as possible.
- (2) A deed of trust not immediately recorded may be avoided by a petition in bankruptcy as being a preferential transfer securing an antecedent debt.

#### **21.16 RIPARIAN RIGHTS**

#### **MISSISSIPPI**

When property faces a river, canal, or other water, the following exception should be made:

Item \_\_\_\_\_. Riparian rights are neither guaranteed nor insured.

#### **21.17 SUBORDINATION**

- (1) When the priority of any lien is being altered by a subordination agreement, you should satisfy yourself that the instrument does what it purports to do. Watch for limitations as to time etc.
- (2) An "Automatic Subordination" should not be relied upon.

#### **21.18 SURVEYS**

When survey coverage is required you should make sure:

- (1) the survey has a proper seal.
- (2) the survey is of the record (deed) description by checking the record description against the survey plat.
- (3) the surveyor certified the legal description to be correct.
- (4) the property fronts on a public road or has access by virtue of a recorded easement which is shown on the survey.
- (5) the SURVEYOR'S INSPECTION REPORT AND CERTIFICATE has been furnished.
- (6) the exception is made to any problem matters as shown by the survey or inspection report.
- (7) Usually we only give survey coverage on a mortgagee policy.

#### **21.19 TAX LIENS**

State and Federal Tax Liens attach to all property and rights to property, and the homestead exemption statutes do not apply as against any State or Federal Tax Lien. Fidelity & Deposit Co. of MD v. Lovell, et al, 108F. Supp. 360. Affirmed, United States v. Fidelity & Deposit Co. of Md., 214 F. 2d. 565

#### **21.20 TAX TITLES**

Tax Titles should not be insured without approval from the home office or your state agency representative.

#### **21.21 TITLE CERTIFICATE**

When title insurance is being requested, our application and attorneys certificate forms should always be recommended.

- (1) A title certificate should not be relied upon:
  - (a) if it makes a general exception to matters of record.
  - (b) if it does not begin with a good warranty deed vesting fee simple title at least 32 years prior to date.
- (2) You should always verify that title is out of the government and a patent has been filed of record.

**21.22 TRUSTS**

**MISSISSIPPI**

- (1) A conveyance of real property under a trust is not valid in Mississippi unless the trust or a Certificate of Trust is recorded. Sec. 91-9-7.
- (2) A trust can only receive property by will or deed.
- (3) A trustee does not have any powers that are not enumerated in the trust.
- (4) A trust may hold title to real property in the name of the trust. Sec. 91-9-2.

**21.23 UNUSUAL RISKS**

If there are any unusual risks, you should satisfy yourself that the coverage requested can be safely given or obtain approval from the home office or your State Agency Representative.

**21.24 VIOLATION OF REGULATORY AGREEMENT**

The United States District Court For The Central District Of California, Case No. CV 85-993 LEW, in an appeal from Bankruptcy Court, affirmed a decision which held that a junior mortgage on a HUD Project for the elderly, without the consent of HUD was invalid and unenforceable as a violation of the terms of the regulatory agreement.

**21.25 MISCELLANEOUS**

- (1) If this risk has been turned down by another title company, you should determine why.
- (2) When there is a good chance of litigation, even with no chance for loss, a policy should not be written since the duty to defend and the ultimate cost of defense in many cases exceeds the actual loss.

**21.26 ASSIGNMENTS OF DEEDS OF TRUST**

If an assignee of a deed of trust fails to record the assignment within 30 days after its date, the assignee shall forfeit 10% of the debt. Sec. 89-5-17. Our Courts said this did not apply to negotiable instruments. Hughes v. Kaw Investment Co., 133 Miss 48, 97 So 465 (Miss 1923)

**21.27 ADOPTED CHILDREN, NOT "HEIRS OF THE BODY"**

Where a Will devises realty "for the term of her natural life and then unto the heirs of her body," adopted children would be excluded. Our Court held that the phrase "heirs of the body," has a biological overtone, refers to lineal descendants, clearly and literally excludes adopted children and that the liberalized adoption statutes do not change the meaning of the phrase. Posey v. Webb, 528 So. 2d. 833 (July 1988)

**21.28 PURCHASE MONEY DEED OF TRUST**

Every mortgage given at the time of the purchaser of real estate to secure the payment of the purchase money is a Purchase Money Deed of Trust. Sec. 89-1-45 Miss Code of 1972.

**21.29 DEED OF TRUST VOID AS TO MECHANIC'S LIEN**

**MISSISSIPPI**

When a builder takes a deed of trust from owner and assigns same to obtain construction funds, the assignment is void as to materialmen and laborers under Section 85-7-183. When a builder takes a deed and then gives a deed of trust to obtain construction funds, the deed of trust is void, both as to the owner and the laborers and suppliers. Lee Wholesale Company v. McCoy, 100 So 2d 121 (Miss 1958)

**21.30 CORPORATE ACKNOWLEDGMENT**

For proper corporate acknowledgment, see White v. Delta Foundation, Inc., 481 So 2d 329 (Miss 1985)

**21.31 DUE ON SALE CLAUSE**

Due on sale clause in deed of trust which excludes (permits) the creation of subordinate liens would be triggered by a foreclosure of the subordinate lien. Unifirst v. Tower Loan of Miss., Inc., 481 So 2d 329 (Miss 1986)

**21.32 LIENS IN COVENANTS**

A lien created by covenants has priority over subsequently filed deeds of trust. Perry v. Bridgetown Community Development Assn., Inc., 486 So 2d 1230 (Miss 1986), and Edwards v. Bridgetown Community Association, Inc., 486 So 2d 1235 (Miss 1986)

**21.33 NOTICE BY FEDERAL AUTHORITIES**

Foreclosure by FDIC under Power of Sale without actual notice to parties in interest would be void under Due Process Clause of Fifth and Fourteenth Amendments. FDIC v. Morrison, Ala 1983. See also Mennonite Board of Missions v. Richard C. Adams, 103 S. Ct. 2706 (1983) for notice concerning tax sales.

**21.34 DEFICIENCY JUDGMENT AFTER FORECLOSURE**

Something more than difference between price paid at foreclosure and amount of debt must be determined before the mortgagee is entitled to deficiency judgment. The attorney must first determine whether value of property properly satisfied debt or creates surplus. Lake Hillsdale Estates, Inc., v. Galloway, 473 So 2d 461 (Miss 1985).

**21.35 WILL AS A MUNIMENT OF TITLE**

The admission of a Will to probate as a muniment of title under Sec. 91-5-35 in no way affects the rights of any interested party to petition for a formal administration or to contest the Will as provided in Sec. 91-7-23, nor does it affect the rights of any creditor or anyone else that desires to contest the Will under Sec. 91-7-21 or Sec. 91-7-91.

**21.36 FUTURE ADVANCE CLAUSE**

Advance to a previous owner under deed of trust with future advance clause is effective against the current owner. Whiteway Finance v. Washington Green, 434 So 2d 1351 (Miss 1983)

**21.37 PUBLIC LANDS**

**MISSISSIPPI**

Corporation cannot purchase public lands.  
Sec. 29-1-75 Mississippi Code of 1972.

**21.38 DEED REQUIREMENT**

Mailing address and telephone number of grantor and grantees now required on all deeds. Sec. 27-3-51 Mississippi Code of 1972.

**21.39 MISSISSIPPI STATE TAX LIENS**

It is our understanding that the Mississippi Attorney General says there is no constitutional or statutory authority for the Tax Commission to execute a subordination agreement or to release property without payment of the lien.

**21.40 HOMESTEAD ABANDONMENT**

A conveyance of the homestead without both spouses joining in the deed is void. Welborn v. Lowe, 504 So. 2d 205 (1987). If one spouse is forced to leave the homestead on account of misconduct of the other spouse, a subsequent conveyance without the absent spouse's consent is likewise invalid.

Grantham v. Ralle, 248 Miss. 364, 158 So 2d 719 (1968)

**21.41 HOMESTEAD EXEMPTION AND FEDERAL TAX LIENS**

Federal Tax Liens have priority over homestead exemption.  
Fidelity & Deposit Co. of MD v. Lovell et. al, 108 F. Supp. 360 (Dist. court). Affirmed, United States v. Fidelity & Deposit Co. of MD, 214 Fed. 2d. 565 (5th circuit)

**21.42 FORECLOSURE WITHOUT NOTICE TO INTERNAL REVENUE**

When property is foreclosed and notice is not properly given to IRS, a junior federal tax lien will be elevated to a first lien. So. Bank of Lauderdale County v. IRS, 770 F 2d 1001 (1985)

**21.43 HOMESTEAD - CONVEYANCE WITHOUT JOINDER OF SPOUSE**

A conveyance of homestead without a spouse joining in the execution of the deed is absolutely void. No subsequent action by the nonjoining spouse cures the invalidity of it.  
Welborn v. Lowe, 504 So 2d 205 (Miss 1987)

**21.44 EXEMPT PROPERTY**

- (1) Homestead generally, Sections 85-3-21 through 85-3-51, Mississippi Code of 1972.
- (2) Except for State and Federal Liens, exempt property is not liable for the debts of a decedent who leaves surviving him a spouse, child, or grandchild. Section 91-1-7, 91-1-19, and 91-1-21, Mississippi Code of 1972. See also Weaver v. Blackburn, 258 So 2d 755 and 294 So. 2d 786

**21.45 OUTER OF COTENANTS**

**MISSISSIPPI**

To oust the cotenants not joining in the deed, these factors must concur:

- (1) the execution of the deed purporting to convey the entire interest in fee simple to one then a stranger to the title.
- (2) the recording of the deed, and
- (3) the entry of the grantee claiming the entire interest in the property for the statutory period.

Quates v. Griffin, 239 So 2d 803 (1970)

**21.46 JOINT TENANCY**

- (1) Estate in entirety is joint tenancy with right of survivorship plus marital relation.
- (2) Estate in entirety or joint tenancy with rights of survivorship does not terminate and become estate in common when parties are divorced.

Shepherd v. Shepherd, 336 So 2d 497 (1976)

**21.47 DUE ON SALE CLAUSES**

Enforceable in Mississippi - First National Bank of Vicksburg v. Caruthers, 443 So 2d 861 (1983) and Casa Grande, Inc., v. Minnesota Mutual Life Insurance Co., 596 F. Supp 1385 (1984)

**21.48 ADVERSE POSSESSION**

For grantor to claim property adversely against his grantee, grantor has burden of proving beyond reasonable doubt that grantee had notice that grantor intended to retain part of the property conveyed. Skelton v. Lewis, 453 So 2d 703 (1984)

**21.49 LIMITATION ON ATTORNEY'S CERTIFICATE OF TITLE**

- (1) Generally, three years. Section 15-1-29 Miss. Code 1972.
- (2) When malpractice is involved, three years. Section 15-1-49, Miss Code 1972. Johnson v. Crisler, 125 So 724 (1930); United Companies Mortgage of Mississippi, Inc., v Jones, 465 So 2d 1083 (1985); Dean v. Conn, 419 So 2d 148 (1982)

**21.50 WILLS - NOTICE**

Domestic Will when probated and recorded in county in which testator resided at time of death constitutes notice throughout state without necessity of recording Will in county where land is situated. Federal Land Bank of New Orleans v. Newsom, 161 So 864 (1935)

**21.51 DESCENT AMONG ILLEGITIMATES**

Section 91-1-15, Miss Code 1972.

**21.52 UNDISCLOSED PURCHASERS**

Where a vendor would not have made a conveyance of land had he known of a prior agreement by the vendee to convey to another the vendor found objectionable, that vendor is entitled to a judicial rescission of the instrument of conveyance.

**21.53 MOBILE HOMES (MANUFACTURED HOUSING)**

**MISSISSIPPI**

If you have knowledge or have been informed that the property to be insured has a mobile home located thereon, you must make the following exceptions in either an owner's or mortgagee policy:

Item \_\_\_\_\_. Any security interest which may be claimed or perfected under the Uniform Commercial Code as to the mobile home located on subject property.

Item \_\_\_\_\_. Any loss and/or claim which may result from the fact that a mobile home rests on the subject property and that it is not presently attached to the land or that it might at some later time be severed from the land.

If there is any question as to what constitutes a mobile home, please contact your agency representative.

In case you are asked to insure the mobile home as realty and make no exceptions, please contact your agency representative before doing so.

**21.54 SALE OF HIGHWAY RIGHT-OF-WAY EASEMENT**

The State Highway Commission does not have the authority to sell a highway right-of-way easement to a private citizen. When the commission has acquired only an easement, and that easement ceases on determination by the commission that it is no longer necessary for public use, the effect is that the title remaining in the landowner is no longer burdened by the easement. Miss. State Highway Comm. v. McClure, No. 57,844 (Aug, 1988)

**21.55 DECREE FOR SEPARATE MAINTENANCE**

Chancery Court has no authority to divest title to property on order of separate maintenance. It likewise lacks authority to vest title to property on separate maintenance; as wife is not entitled to any greater right than if cohabitation continues; her entitlement is to monetary amount for support and does not extend to division of marital assets. Thompson v. Thompson, 527 So. 2d. 617 (1988)

**21.56 PUBLICATION OF TRUSTEE'S NOTICE OF SALE**

Section 89-1-55 requires the notice of sale to be advertised for three consecutive weeks preceding such sale. In our opinion, this would require that the notice must appear in a newspaper published on the same day of each successive week or there would be a "break" in the 21 days notice required prior to the sale date. Watch for a change in publication dates which would void the sale. This usually happens when weekly newspapers publish a day early because of a holiday.

Advertisement for three consecutive weeks and sale 7 days after last publication complied with law. Donald v. Commercial Bank, 132 Miss 578, 97 So. 12 (1923)

Advertising longer than statute requires does not render sale void. Jones v. Salmon, 128 Miss 508, 91 So. 199 (1922)

Where more than one week elapsed between last advertisement and day of sale, sale was void. Planters' Mercantile Co. v. Braxton, 120 Miss 470, 82 So. 323 (1919)

#### **21.57 ENFORCEMENT OF COVENANTS**

#### **MISSISSIPPI**

In a master development plan, the Supreme Court held that property owners of a portion of the property within the development subject to covenants could enjoin the prohibited use of adjacent property within the development upon showing that the conduct of the adjacent landowner is having an adverse effect upon their property. White Cypress Lakes Dev. Corp. v. Hertz, 541 So.2d 1031 (1989)

#### **21.58 PRIORITY OF HOMESTEAD EXEMPTION CHARGEBACK**

Section 27-33-37(L) Mississippi Code of 1972 provides as follows:

It shall be the duty of the board, and it is hereby given the power to order the tax collector, by an order entered on its minutes, to reassess, and list as subject to all taxes, the property described in an application for homestead exemption and as entered on the regular land assessment roll, under the following circumstances:

- (1) When an application for homestead exemption is finally rejected by the commission for reimbursement of tax loss which has been regularly approved by the board and entered on the supplemental roll; or
- (2) Where an application has been wrongfully allowed by the board.

When any property has been reassessed as herein provided, all additional taxes due as a result of such reassessment shall become due and be payable on or before the first day of February of the year following that in which notice to make the reassessment is issued; and if not paid, the tax collector shall proceed to sell the property for the additional taxes in the same manner and at the same time other property is sold for the current year's taxes, or he may collect the taxes by all methods by which other taxes on real estate may be collected. Provided, no penalty or interest shall be applied for any period prior to February 1, of the year following that in which the reassessment is made, and provided further, that such reassessment shall not take effect or become a lien on the property of bona fide purchasers or encumbrancers for value without notice thereof, unless there shall have been filed prior to their attaining such status a notice of rejection in the chancery clerk's office in the county in which the property is located, which notice shall be recorded and indexed as are deeds; but the applicant shall in all cases remain personally liable for such reassessment.

#### **21.59 SUBSTITUTION OF TRUSTEE**

Section 25-33-21 Mississippi Code of 1972 provides as follows:

Annotated cases do not prohibit a corporate officer, who is also a notary, from validly acknowledging the signatures of other officers of the corporation on a "Substitution of Trustee" document, even where such officer is the trustee for whom another officer is substituted. Thames v. Jackson Production Credit Association, 600 So.2d 208 (1992)

#### **21.60 FRAUD/FORGERY**

For your protection and the protection of the company, we would again caution you not to:

- (1) Issue any commitment or policy insuring title to land in which agent, his partners, or employees have any financial interest.
- (2) Issue any commitment or policy based on a certificate of title from an attorney that has any financial interest in the property to be insured.
- (3) Remove the survey exception based on a survey from a surveyor that has a financial interest in the property to be insured.
- (4) Rely on any certification, authority to cancel, subordination, deed, or other instrument brought to you by a party that has a financial interest in the transaction without personal verification of their execution by the party that executed same.

**21.61 NOTICE TO CREDITORS - ESTATE**

**MISSISSIPPI**

Notice by publication in an estate proceeding may not bar untimely claims if the creditor is known or reasonably ascertainable. Tulsa Professional Collection Services, Inc. v. Joanne Pope, Executrix, 108 S. Ct. 1340, 99 L. Ed 2d 565 (1988)

**21.62 AGREEMENTS AND THE FDIC**

Section 1823(e) of the Federal Deposit Insurance Act provides that no agreement contrary to the FDIC's interest in an asset acquired under that section is valid against the FDIC unless such agreement:

- (1) shall be in writing;
- (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank;
- (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee; and,
- (4) shall have been continuously from the time of its execution an official record of the bank.

W. T. Langley v. FDIC, 56 U.S.L.W. 4026, 108 S. Ct. 396, 98 L. Ed. 2d 340 (1987)

**TO BE SAFE YOU SHOULD ALWAYS** make certain that any agreement or subordination by a bank has been approved by and is reflected in the minutes of either the loan committee or the board of directors. Otherwise, if the bank fails, the FDIC may not honor said agreement or subordination.

**21.63 LICENSE AGREEMENTS**

License agreements to an individual by the State or public utilities which grant the right to use "public property" are generally vague and limited in their scope and therefore, they are not insurable.

Licenses reserved by the State or a public utility usually contain numerous restrictions which permit the entity to limit access across the property, permit the flooding of the property and the like. An exception for the particular restriction contained therein should be included under Schedule B of the commitment or policy.

**FOR ASSISTANCE CONCERNING ANY UNDERWRITING  
OR PROCEDURAL PROBLEMS,  
PLEASE FEEL FREE TO CALL THE HOME OFFICE  
(1-800-647-2124)**